Exhibit A

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-11233 (REG)

- -x

In the Matter of:

CHEMTURA CORPORATION

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York 10004

January 31, 2013

9:53 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

ECRO: EMMANUEL

HEARING re: Doc #5769 Motion to Approve/Reorganized Debtors Motion for an Order Enforcing the Discharge Injunction Under the Debtors Chapter 11 Plan of Reorganization

Transcribed by: Theresa Pullan

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P R O C E E D I N G S

THE COURT: We have a busy day today. We have major matters in both Chemtura and Bearing Point. I want to get appearances on Chemtura, and then I have some preliminary remarks.

I know that our friends from Missouri had some challenges in getting these issues heard -- I do need quiet on the phone please. But certainly I'll hear the same arguments over the phone that I would have heard in person. First, for the Chemtura estate.

MS. LABOVITZ: Your Honor, Natasha Labovitz from Debevoise & Plimpton representing Chemtura.

THE COURT: Okay, Ms. Labovitz. Thank you. Anybody in the courtroom on behalf of the litigants, the Fermenich litigants? No. Okay. On the phone?

MR. MCCLAIN: On behalf of the Fermenich litigants, Your Honor, Kenneth McClain.

THE COURT: Okay, Mr. McClain.

MS. TOBIN: Yes, and as local counsel for the Fermenich litigants, Your Honor, Rita Tobin. I'm actually downstairs and I will be off Courtcall and in the courtroom in about five m minutes. I had traffic problems getting in.

THE COURT: Ms. Tobin, are you going to be the principal arguer for your side?

MS. TOBIN: No, no, no, Mr. McClain is, but I am

going to be in the courtroom.

THE COURT: Okay. Do you want us to wait until you can get upstairs?

MS. TOBIN: I can get up -- I'm right downstairs, so I should be upstairs shortly. Yes, that would be great.

THE COURT: All right. We'll stand by.

MS. TOBIN: Okay.

(Pause)

THE COURT: Mr. McClain, you're hearing quiet on the courtroom side of the phone because we're waiting for Ms. Tobin.

MR. MCCLAIN: And thank you, Your Honor. Yes, I understood that. And you're not hearing any noise from my end, are you?

THE COURT: I can't tell where it came from, but I, but after I made the comments, the noise stopped which I guess was a good sign.

MS. TOBIN: Your Honor, I apologize. I came from West Chester, and they had some problems up there this morning.

THE COURT: Okay. Ms. Tobin is now here. All right. Ms. Labovitz, Mr. McClain, make your arguments as you see fit, but keep them relatively brief because I've read the papers. Mr. McClain, when it's your turn to argue, I need you to focus on the U.S. Supreme Court of Mullane, decision in Mullane, which to my surprise you didn't cite much less substantively

address. And with it the decisions in Best Products, Chateaugay and Placid Oil.

You know, we have the U.S. Supreme Court decision that's talked about what's necessary here, and in particularly notice that's reasonably calculated to reach its recipient. And which, unless I read it wrong, and I think I'm pretty good at reading cases at this point in my career, the subjective understanding of the claimant is not relevant. The -- whether or not the claimant read the notice in the newspaper or other means of providing published notice is not relevant, and I have some difficulty seeing how or why you made the arguments you did while failing to address the Supreme Court decision that's directly on point.

And, you know, I read your brief, I read your table of authorities which is why my case management order require tables of authorities to find your discussion of Best Products, Chateaugay and Placid Oil -- couldn't find anything. So I need help from you on that.

On the class action points, your opponent says at least seemingly correctly that this isn't a class action, so why do we have all this discussion about class actions, and I have some difficulty seeing why your opponent isn't right on that as well. And while I recognize that the inclusion of these folks or the failure to include them in the earlier settlement is a second string to their bow, and it may be

depending on when they, you know, contacted your firm might not be regarded within that group of additional people who are covered by the earlier settlement as having been deemed to have been retained by your firm back when the settlement was entered into. I don't see how that goes to their more fundamental point, and I need help on that.

Ms. Labovitz, I do not recall you actually asking me for discovery style relief to get a more fulsome disclosure beyond those redacted retention agreements with respect to when the folks here, I think there are nine of them, first contacted Humphrey, the Humphrey Firm. But you help me understand whether you want to pursue your second ground for relief or whether you're content to rely on the Mullane issues and the like. We'll go in the traditional order. Ms. Labovitz, I'll hear from you first.

MS. LABOVITZ: Thank you, Your Honor. For the record, this is Natasha Labovitz from Debevoise and Plimpton representing Chemtura.

Your Honor, particularly in light of the Court's busy calendar today, I'm going to try to be very brief in my initial remarks. I would request the opportunity to respond to any points that Mr. McClain makes.

THE COURT: Sure. And if you say anything in reply, I'll give Mr. McClain a comparable opportunity to sur-reply, but in each case the second round has to be limited to new

stuff that was raised here and not to address things that could have been said the first time.

MS. LABOVITZ: I understand, Your Honor. What I'd like to do is cover what I think are the three main points that are before the Court today, and in doing that, I will answer the question about whether we're asking for discovery style relief or whether we think this could be decided on the pleadings.

Your Honor, there are some tangents in the pleadings, but I think this really comes down to three big points, the first two of which are related, and the third of which is separate.

The related points are, as you characterize them, the Mullane factors, although I have looked at them as the Mullane and Waterman factors. The questions are -- was the bar date noticing scheme reasonably calculated to provide notice to unknown creditors? I think it's undisputed that these Fermenich plaintiffs were unknown creditors.

THE COURT: Ms. Labovitz, don't necessarily raise your voice, but come a little closer to the microphone.

MS. LABOVITZ: Of course, Your Honor. So the first question that I think arises under the bar date noticing and discharge portion of our argument is whether the bar date noticing scheme was reasonably calculated to provide notice to unknown creditors. And as I said, I think that it's undisputed

that he Fermenich claimants were unknown creditors from the perspective of Chemtura during the chapter 11 case.

The second question that is related to this is whether these plaintiffs' claims fall within the scope of the definition of claim such that they're susceptible to discharge. In other words, the Debtors have recognized throughout these chapter 11 cases that there is a category of potential future claim that is so remote, so I don't even want to say contingent, it's so incipient that it simply cannot be characterized as a claim and discharged under a plan of reorganization. The classic example of those kinds of claims is a manufacturing defect that does not come into contact with a party and cause injury until after the chapter 11 case is concluded. So, for example, a manufacturing defect in an airplane that causes a plane crash after the confirmation of a chapter 11 plan cannot give rise to a claim that would be discharged in bankruptcy I think under applicable precedent. Because the exposure, the injury that causes the harm has not occurred until after the case. We've always conceded that point.

I think that in this case and throughout the chapter 11 cases, we view diacetyl claims as being different, because in all such instances, almost based on the very nature of diacetyl and how it was used in the food industry. Every claimant that may have a diacetyl claim came into contact with

diacetyl and therefore was exposed and incurred injury within the meaning of the Bankruptcy Code many years before Chemtura filed for chapter 11 because the food industry ceased using nonorganic diacetyl before the chapter 11 case. So all instances of exposure should have occurred before the chapter 11 case.

So looking at those two points, Your Honor, the Debtors' position is that the bar date noticing scheme was comprehensive, the company took great pains to provide not only constructive notice, but in all instances possible, actual notice to unknown claimants. We think our bar date noticing scheme was good, and we think that's evidenced by the fact that we started the case with 50 diacetyl claims that were known to the company, we ended with 375 including five new claimants from the very Fermenich facility that is at issue here. From our perspective our bar date noticing scheme was not only reasonably calculated to provide notice, it worked, it did provide notice to the extent possible. And from our perspective that is the conduct that was required under Mullane. You can't be held to the standard to provide actual notice to every possible unknown creditor.

I addressed the point of whether the plaintiffs' claims fall within the scope of the Bankruptcy Code definition of claim. We think in this case they clearly do.

From our perspective we think that's the end of the

story, we think that the Court could rule today based on the pleadings, on the adequacy of the notice and the scope of the discharge, and that there's no need to get to the third argument that we've raised, but as a backup we've raised it.

And the third argument is the one that you identified, Your Honor, as the independent question of whether the claims fall within the scope of Chemtura as diacetyl settlement with the Humphrey Farrington firm. As is clearly covered in the pleadings, that settlement was intended to cover not only all of the claimants that Chemtura knew about at the time of the chapter 11 case, but just as added protection, anyone else that Mr. McClain or his law firm knew about at that time. We don't know whether or not these nine claimants fall within the scope of that settlement or not, that's information that Mr. McClain has and we don't have. To the extent that Your Honor either you thought that there was reason -- I'm going to back up on that. To the extent that, Your Honor, you don't believe you can rule on the law on the Mullane and Waterman question, then we would think there is an open factual question both as to whether these are claims that are dischargeable and as to whether these claimants were known to Mr. McClain at the time of the settlement.

THE COURT: Ms. Labovitz, I can see a scenario under which a potential claimant might have consulted the Humphrey Farrington firm with a phone call or a meeting with a view to

representation with a level of finality sufficient to allow the attorney-client privilege to attach, but might have delayed in having signed one of the retention agreements that was provided to me in redacted form. Did you have any discussions with the Humphrey Farrington firm about some method of getting the information that might be relevant to your last point without impinging on their attorney client privilege such as getting the dates of first contact, the dates of any communications or anything of that sort?

MS. LABOVITZ: Your Honor, we had a letter exchange with the Humphrey Farrington firm in which Chemtura asked for information of that kind. We haven't had follow-up discussions about that. I do think that there may be ways to get at that information, but again, Your Honor, respectfully we think this can be discharged as a matter of law without having to get to that point. If we do have to get to that point, I'm sure we could explore ways of getting the information we need.

THE COURT: Okay. Anything else before I give Mr. McClain a chance to be heard?

MS. LABOVITZ: No, thank you, Your Honor.

THE COURT: Okay. Thank you. Mr. McClain?

MR. MCCLAIN: Your Honor, you, in your initial questions you talked about Mullane and adequacy of notice issues, and I will address those points. We put that information in our brief simply to illustrate the point that

these people in fact were unaware. Whether or not that has any impact on the noticing scheme was not the focus of why we pointed that out. We had long discussions as the Court will recall about the noticing scheme and the difficulties of it before the notice was approved by the Court in which we talked about important issues that impinge on the second point that I really want to focus on, which is a point that this Court previously made in the context of the GM bankruptcy, where you pointed out, Judge, in that case in the opinion at 407 Br. 463 (2009) that the notice given on this motion was not fully effective since without knowledge of an ailment that had not yet manifested itself, any recipient would be in no position to file a present claim. That's really the focus of our issue and complaint here.

And I just want to back up to a point that we made at the time that the bar date was set and the noticing scheme was discussed. This is a new disease process. In 2002, the New England Journal of Medicine published the first article about diacetyl and its ability to cause disease. So the issues involved in regard to the medical community, workers and lawyers becoming aware of this disease process is really relatively speaking asbestos and these other things that have consumed the courts in the opinions that we cited to in the arguments that have been previously made are quite different in that it is a new disease process. But the Waterman Steamship

case that the Court asked us to address in regard to the Mullane scheme has some important language that we did discuss in our brief. The defendants pointed to this any detectible signs language that the Court I'm sure is aware of without reference to able to perceive the significance and implications language contained in the opinion which you clearly were aware of when recognizing the complexity of this issue in a latent disease situation such as was existed in the General Motors case. In fact, Judge, on this issue, in the Chemtura bankruptcy itself in a related but separate situation, on September 8th of 2010 --

THE COURT: Pause please Mr. McClain. GM didn't involve latent diseases, it involved people who were hurt in car wrecks. When your car goes off the road and gets into a crash, that's not so latent. I mean you know about it. And what had bothered me was the scenario under which GM made cars before the sale and they didn't crash until years later. That is not a situation where somebody was injured much earlier but had not brought the lawsuit until a later time. When you have a car wreck, which is what I talked about in GM, that's in Macy's window, everybody knows when they're in a car wreck from the instant that the car wreck takes place.

MR. MCCLAIN: Judge, I'm talking about your opinion regarding the asbestos claim within the GM bankruptcy, and those people who had not yet had manifested asbestos claims who

were trying to assert them after the Debtor's asset sale. And it's at 407 Br. 463, the 2009 opinion.

THE COURT: All right. Go on.

MR. MCCLAIN: So that's one point, Judge, that caught my attention that it's similar to our problem which is that if someone doesn't know they have a disease or they don't have a disease yet, no noticing scheme will be effective as to them nor should it bar under due process Mullane and its progeny a claim that arises later. Particularly in this instance where there was no futures representative and no futures were anticipated, and in fact repeatedly this defendant claimed that no futures were intended to be covered by the settlement. In our view, these are futures. If they had filed a claim, Judge, I think we had some indication from you in regard to a similar chemical exposure against Chemtura in this very bankruptcy where you ruled, and the transcript that I have dated September 8th of 2010 where a Mr. Cogut (phonetic) came before the Court claiming that he had been exposed to chemicals at the Naugatuck Treatment Company plant owned by the Debtor. And in that very case, the proceeding, you struck that claim because he offered no evidence or allegations of any specific injury to himself or his family. In essence, his claim was that his exposure may cause injuries, that it becomes apparent now by which I mean or I assume he means shortly in the future or in the future which I understand to be more in the future. That's insufficient to

stay the claim much less for 20, or 10 or 20 million dollars. As a conclusion of law, I rule that while I wouldn't demand all of the claimant's evidentiary support at the proof of claim stage, the law requires that there be some showing of a an entitlement to relief of a legally cognizable injury.

Our point on these nine individuals is that there is no evidence since they had a legally cognizable injury as of the bar date and the settlement effective date. If they had, they would have been included in the settlement, but they were not even our clients at that point in time because there was no evidence that they were sick. That's the nature of why we believe that these claims are viable and not barred. And that's the focus of our argument in this case, Judge, and the rest of the arguments are within the pleadings. So unless the Court has questions, that's all I have.

THE COURT: Yeah, I do have one follow-up question. Were you saying by your last point that's why they weren't included in the settlement, that there were people who had consulted you before the date that they signed their retention agreement but they weren't included in the settlement because they didn't have legally cognizable injuries?

MR. MCCLAIN: Judge, I would have to look to see to be sure about that. But in general, if they didn't have legally cognizable injuries, we didn't file proofs of claims for them because of the principal that you announced and we

understood even before you announced it, that I think it's actually automatic what you announced on September 8th of 2010 that if you have no legally cognizable claim you don't have a bankruptcy claim either.

THE COURT: Um-hum. Continue please.

MR. MCCLAIN: So it was our intention not to file claims that were not legally cognizable, and I don't think that we knowingly did that. So I would have to look to be certain about that, but I think we tried to file all the claims that we had in our office that potentially involved Chemtura before the effective date and the bar date. And in fact we included some that we discovered along the way that were not filed, but we included them within the settlement with Chemtura even afterwards to be sure that we were being comprehensive and acting in good faith with them. But we don't think that it's possible to bar people who we subsequently came to represent with a settlement that was, that had occurred before the representation and say constitutionally at least or even contractually, you know, you didn't get any money, you didn't sign this agreement, but you're barred because the McClain firm represented some other people that we settled with. That doesn't seem to be fair and it's not certainly something that I've seen the Court previously address or sanction.

So we think that these are futures claims as properly understood and were not included within the settlement and

should not be barred from pursuing their claim against Chemtura in State Court since Chemtura did not want a future settlement. We proposed that at the beginning and they did not want a futures rep, and they said that futures were not included within the claims that we were currently settling. And that would be my understanding of what these are.

THE COURT: Okay. Anything else? Mr. McClain, anything else?

MR. MCCLAIN: No, Your Honor, that's all I have.

THE COURT: Okay. Ms. Labovitz, reply?

MS. LABOVITZ: Thank you, Your Honor. I'd like to start by once again drawing a distinction between the two distinct arguments that Chemtura is making because I think Mr. McClain continues to collapse them on each other. Chemtura's point is first that the nine Fermenich claimants have claims that are barred and discharged under the bar date in Chemtura's plan of reorganization. That has nothing to do with the settlement with the Humphrey Farrington firm. That settlement was embodied in one part of the plan, but it's not even the entire settlement that covers all diacetyl claimants. As the Court may recall and Mr. McClain doubtless does, there were other diacetyl claimants that were not represented by Mr. McClain's firm, they are still barred by the plan of reorganization and covered by that plan.

So there are two distinct points here. One is the

bar date and the discharge; the other is the contractual settlement with the McClain firm.

On the bar date and discharge point, I understand the points that Mr. McClain is raising, and the on a human level difficulty of wrestling with the idea that the Bankruptcy Code can and must act to bar claims of creditors who as a factual matter do not know or have the factual information to file a proof of claim. Your Honor, I acknowledge that's a tough concept. It's a concept, however, that courts have wrestled with and dealt with long before we stand in the Court today. The A.H. Robins court at the circuit level, not in this circuit, but a seminal case on this issue.

THE COURT: Fourth Circuit if I recall?

MS. LABOVITZ: I'm going to have to look it up now, Your Honor. You got it for me?

THE COURT: I am pretty sure of that.

MS. LABOVITZ: It -- what's that?

THE COURT: I'm pretty sure it was the Fourth Circuit Court of Appeals.

MS. LABOVITZ: I think it is the Fourth Circuit, Your Honor. In any event, it's cited in our pleadings and in our table of authorities. Your Honor, the A.H. Robins court says what matters is that when the acts constituting a tort or an injury occurred prepetition there was a claim. And it doesn't matter whether the plaintiff knew about the bar date and filed

the proof of claim. It's difficult, but it's the law. Mr. McClain says that he understood before anything was said in the Chemtura case that a claim doesn't need to be ripe in order for a proof of claim to be required by the bar date. But again, Your Honor, that's just not the law even in this district. Judge Bernstein said in Quigley and Judge Lifland said in Chateaugay that when an actual chemical exposure occurs prepetition, the resulting injuries are prepetition claims and a proof of claim is required. And in the Quigley case, Judge Bernstein expressly addressed the question of whether a claim needs to be ripe as a matter of law to allow a complaint to be filed. And Judge Bernstein said it doesn't matter if under state law you would file a complaint at the point of a bar date, you should submit a proof of claim anyway.

Judge Bernstein's theory in Quigley would suggest that Mr. Cogut, who is the claimant from September 2010 who Mr. McClain referenced, Mr. Cogut did exactly the right thing by filing a proof of claim that said I've been exposed to chemicals, I don't know if I have a claim or not. And applying the Bankruptcy Code, exactly the right thing happened, which is we said you may have a claim for chemical exposure, but you can't articulate a claim in this bankruptcy case for 10 or 20 million dollars when you have no injuries to point to. That's the way the law works. In some situations -- and I'm going to come to how I think the courts have addressed this challenge --

in some situations, especially in the asbestos cases where we know there is a large class of claims that has a long latency period, we know that there is some X-factor of tort obligations out there that is going, that it's incipient it's going to ultimately be an obligation of the debtor, we've said it's not sufficient for us just to rely on the bar date noticing scheme that is a standard noticing scheme or even an enhanced noticing scheme like the one we used in Chemtura. So for those long latency cases where you know there's going to be a category of claims out there, the asbestos trust, the 524G contract has arisen as the way to deal with those cases. But that doesn't mean you have to go through that process or impose it, that kind of a future claims trust in every case. And the case law that I can point to that helps us understand why that is, is the District Court Opinion in Waterman.

In Waterman you may recall Judge Conrad originally looked at the bar date noticing scheme and said it's a good enough noticing scheme, it's adequate, yes there were future claimants but it's a good enough noticing scheme, they published their notice, you know, in a major newspaper just the way you're supposed to, that's enough. And when Judge Conrad's decision in Waterman went up on appeal, the District Court said you can't quite do it that way. The adequacy of your noticing scheme has to be tailored to reflect the kinds of claims that you know you're going to have. And the District Court in

Waterman said you knew you had this future class of asbestos claimants and you needed to have an enhanced noticing scheme that reflected the scope of claims that you knew you were going to have. It needed to be appropriately tailored to the circumstances. And so the District Court referred that question back down to Judge Conrad and asked Judge Conrad to pass on the question of whether the noticing scheme the debtor had used in that case was reasonably tailored to the kinds of tort claims that they had. And in that case Judge Conrad found that the noticing scheme wasn't reasonably tailored.

But you can take that construct, that legal construct now and look at Judge Lifland's opinion in Chateaugay where Judge Lifland said there were asbestos claims, they didn't establish an asbestos trust, but they used enough of a good noticing scheme that it's okay, because in that case, this is important, Judge Lifland was saying Chateaugay is not primarily an asbestos case, there, you know, this is not the construct or the rationale for this case, and, therefore, Judge Lifland said they didn't need to go through the whole process of establishing an asbestos trust.

And, Your Honor, I think that's the line of cases that points the way through this Chemtura challenge. In Chemtura, as you know and as Mr. McClain knows, the noticing scheme was not your garden variety bar date noticing scheme, it was comprehensive, it was expensive, it took a long time to put

in place. We had more than one hearing before Your Honor to discuss whether it was adequate, the company ended up providing additional notice even over and above the enhanced scheme it was already proposing with the direct input of Mr. McClain and his fellow representatives of diacetyl claimants. It was comprehensive. And from our perspective it was reasonably tailored to with the class of plaintiffs that we knew that we had, particularly in light of the fact that diacetyl is a low latency kind of chemical exposure, it's not like asbestos. People do know that they have injuries. Mr. McClain's point is that they may not be immediately diagnosed with a diacetyl related injury that could be the basis for filing a complaint, I think that's Mr. McClain's point. But again I would come back to the Quigley case and the Holmes case coming out of the Eastern District and say that's just not the legal standard. The legal standard is whether there was exposure, whether the bar date noticing scheme was adequately tailored under Waterman to the kind of tort plaintiffs that we had. And ultimately I think the proof that it was is that Chemtura's knowledge of its diacetyl claimants increased by approximately 325. And since the chapter 11 case we have only these nine plaintiffs who came up. It's not that there was a huge class of claims that we didn't reach.

Your Honor, unless you have any questions, I think that's all I have.

THE COURT: No, thank you. Okay. Mr. McClain, sur-reply limited to new stuff you heard from Ms. Labovitz this last time.

MR. MCCLAIN: Yes, I fundamentally disagree with the factual matter that these are not long latency diseases and that people know that they're sick from diacetyl, and that these people were sick before 2009. I just don't think that there's any evidence of that, and I disagree with it fundamentally.

I have a number of clients, including these who do have long latencies and have no symptoms that are diagnosable before they are diagnosed. And in fact, in this case I would dispute the fact that they had a diagnosable disease by 2009. And I think that this falls right within the opinions that I previously pointed the Court to which say that it's not constitutional to bar people who do not have demonstrable disease before the bar date, it's just not, it does not give them due process in this circumstance. And so, Judge, I would ask the Court for these nine individuals not to, not to say that they are barred, they didn't have disease beforehand and they didn't know. That's all.

THE COURT: Okay. Thank you. All right. Everybody sit in place for a minute. Mr. McClain, you're going to hear a little quiet.

MR. MCCLAIN: That's fine.

(Pause)

THE COURT: All right. Ladies and gentlemen, in this contested matter in the chapter 11 cases of Chemtura and its affiliates the reorganized Debtors seek entry of an order pursuant to Sections 105(a), 524 and 1141 of the Code, and Bankruptcy Rule 3020(d) enforcing the discharge injunction as to the Firmenich claimants and their counsel, Humphrey Farrington and McClain, and seek orders first finding that the claims asserted in the diacetyl lawsuits now pending in State Court arose before the Chemtura petition date and were thus discharged pursuant to the plan of reorganization; second, directing the Firmenich claimants and their counsel to dismiss the Chemtura defendants from the diacetyl lawsuits; and third, declaring that the Firmenich claimants and their counsel are barred from attempting to seek monetary damages or other relief with respect to any of their diacetyl related claims.

The reorganized Debtors' motions in each of their three prongs are granted. I find that the claims asserted by the Fermenich claimants in the pending State Court diacetyl lawsuits are claims within the meaning of Federal Bankruptcy Law that arose before the petition date and that are thus subject to discharge under Chemtura's plan of reorganization; I find that they're enjoined from seeking any form of relief from the Chemtura defendants with respect to their diacetyl related claims, and I will direct the claimants to dismiss the Chemtura

defendants from the pending diacetyl lawsuit as quickly as that reasonably may be accomplished.

My findings of fact and conclusions of law underlying this decision follow.

Turning first to my findings of fact. I won't lay out every fact in this matter, but instead will address only those relevant to this decision. On March 18, 2009, Chemtura's domestic operations filed petition for relief under chapter 11. From 1982 to 2005, Chemtura Canada manufactured and sold diacetyl, a butter flavoring ingredient that was widely used in the food industry prior to 2005 to certain customers in the U.S. And Chemtura acted as Chemtura Canada's intermediary purchasing the diacetyl from Chemtura Canada and then selling it to customers in the U.S.

In 2001, food industry workers began alleging that exposure to diacetyl caused respiratory illnesses, and product liability actions were filed alleging that diacetyl was defectively designed or manufactured. As of the petition date, Chemtura and Chemtura Canada faced approximately 15 filed diacetyl lawsuits involving approximately fifty (50) plaintiffs. In the summer of 2009, the Debtors developed a bar date noticing program involving a combination of general and importantly site specific notices. The site specific notices were designed to provide notice to potential tort plaintiffs in known geographical locations. Putting it in another way, the

locations were known, but the people who might have claims in those locations were not. On August 4, 2009, the Debtors filed a motion before me seeking my approval of their bar date noticing program. The diacetyl claimants who were then represented by Humphrey Farrington filed a limited objection arguing in part that the noticing program for unknown creditors was not reasonably calculated to inform potential diacetyl claimants of the need to file a proof of claim.

The Debtors argued that the site specific diacetyl notices which Humphrey Farrington had overlooked in its objection were more than adequate to satisfy due process requirements. In addition, the Debtors pointed out that other diacetyl claimants had previously argued that it was unlikely that there would be future claims because of a stated short latency period for manifestation of injuries from diacetyl exposure. Though I note for the avoidance of doubt that this was other diacetyl claimants and not the Humphrey Farrington firm, and Mr. McClain has stated as recently in oral argument today that he differs with that statement.

After hearing argument from both sides, I approve the Debtors' bar date noticing program noting at that time that it was important to me that the Debtors had done or proposed more than a generalized national publication, which is why I welcomed the Debtors' proposal to provide site specific notice. I was then not called upon to decide and I do not decide today

whether notice the way it's often done in large bankruptcy cases by notice in publications like the New York Times and Wall Street Journal would, without the supplemental noticing undertaken by the Debtor, be enough to pass constitutional muster or not.

On August 21, 2009, an order approving the bar date noticing program was entered, and October 31, 2009, two months later was established as the bar date for filing proofs of claim.

At the request of the Humphrey Farrington firm, the Debtors added 83 additional manufacturing site locations for site specific notice, including of particular significance here, the Fermenich facility. The notices informed potential claimants that they might have a claim under various legal theories if they were exposed to diacetyl and such exposure "directly or indirectly caused injury that becomes apparent either now or in the future." The notices specifically informed potential claimants that they needed to file a proof of claim by the bar date in order to preserve any claim alleging diacetyl related injury. And in addition, and what I thought then and still do think, is the salutary practice, although I don't make any finding as to whether it's constitutionally required. There was even language in Spanish to lead the reader to help if he or she was a Spanish speaking recipient.

After the notice was given and by the time the bar date passed, the Debtors received 373 non-duplicative proofs of claim related to diacetyl, markedly more than the 50 that were on the table at the time that the chapter 11 case was filed. Of note, five of the 373 were filed by Humphrey Farrington on behalf of individuals who worked at the Fermenich facility. However, none of the claimants pursuing the State Court action to which the reorganized Debtors now object filed a proof of claim.

After the bar date passed, Humphrey Farrington and the Debtors reached a settlement which I approved on September 1st, 2010 resolving the 347 diacetyl claims filed by Humphrey Farringdon and all claims by anyone represented by Humphrey Farrington as of the effective date of the settlement in exchange for $50 million to be divided by Humphrey Farrington among its clients. The settlement became effective on November 11, 2010. This Court entered an order confirming the chapter 11 plan of Chemtura Corporation on November 3rd, 2010 with a plan effective date of November 10, 2010. The confirmation order contained language which I'll explore more fully below implementing discharge and injunctive provisions that were set forth in the plan.

On September 12th, 2011 the Fermenich claimants who were nine individuals represented by the Humphrey Farrington firm, filed diacetyl related lawsuits in the Superior Court in

Middlesex County, New Jersey against, among others, Chemtura and Chemtura Canada. For reasons that are not fully clear to me, they didn't serve the reorganized Debtors for a period of nine months after they filed the lawsuits until July 9, 2012. When the reorganized Debtors learned of the lawsuits in March of 2012, they then reached out to counsel for the Firmenich claimants to demand that the reorganized Debtors be dismissed from the diacetyl lawsuits contending that the lawsuits violated the discharge injunction entered by this Court. When the parties were unable to come to a consensual resolution, the reorganized Debtors filed this motion.

Turning now to my conclusions of law. Under Section 1141(d)(1) of the Code, confirmation of a plan of reorganization provides a discharge to a debtor that extinguishes and debts claims against the debtor that arose prior to the confirmation. Section 1141(d)(1) provides in relevant part, and I'm quoting.

"Except as otherwise provided in this subsection in the plan, or in the order confirming the plan, the confirmation of a plan:

(a) discharges the debtor from any debt that arose before the date of such confirmation ... whether or not

(i) a proof of claim based on such debt is filed or deemed filed under Section 501 of this title...

In line with that section of the Code, my order

confirming the debtors' plan of reorganization stated at paragraph 141 in relevant part and I'm quoting. "Pursuant to Section 1141(d) of the Bankruptcy Code and except as otherwise specifically provided in the plan, the distributions, rights, and treatment that are provided in the plan shall be in full and final satisfaction, settlement, release and discharge, effective as of the effective date of all claims interest and causes of action of any nature whatsoever including any interest accrued on claims or interest from and after the petition date whether known or unknown for periods, this order shall be a judicial determination of the discharge of all claims and interest subject to the effective date occurring except as otherwise expressly provided in the plan."

Then Section 524(a)(2) of the Code provides that the discharge afforded to a debtor "operates as an injunction against the commencement or continuation of an action, the employment process, or an act, to collect, recover, or offset such debt...."

And then the confirmation order contains language mirroring that of Section 524(a)(2) or implementing that. It states in part, again I'm quoting. "All entities who have held, hold or may hold claims or interest ... that have been discharged pursuant to Section 11.7 [of the plan] or are subject to exculpation pursuant to Section 11.6 [of the plan] ... are permanently enjoined, from and after the effective

date, from taking any of the following actions: (a) commending or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims or interest ... (d) commencing or continuing in any manner in the action or other proceeding of any kind on account of or in connection with or with respect to any such claims or interest ... discharge pursuant to the plan."

Section 11.6 of the plan "Discharge of Claims and Termination of Interest," and Section 11.7 "Injunction," contain virtually identical language to that in the confirmation order.

As a result of Sections 1141(d)(1) and 524(a)(2) of the Code and the related provisions in the plan and confirmation order, the reorganized Debtors argue that the Fermenich claimants are barred from asserting their claims against the reorganized Debtors in the State Court diacetyl lawsuits. I agree.

The first and most vigorously argued issue before me is whether these are claims at all, that is prepetition claims. At Section 1141(d)(1) only discharges claims that arose prior to the confirmation, it is necessary to first determine when the claimants' claims arose.

Section 1015(a) defines "claim" broadly to include "a right to payment whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured,

unmatured, disputed, undisputed, legal, equitable, secured, or unsecured...." As the Ninth Circuit noted, this definition is "designed to ensure that 'all legal obligations of the debtor no matter how remote or contingent, will be able to be dealt with in the bankruptcy case.'" California Department of Health Services vs. Jensen (In re Jensen) 995 F.2d 925, 929 (9th Cir. 1993). I've left out its citations.

Importantly -- and this is why I have the problems with the arguments that are the principal arguments upon which the Fermenich claimants rely including those that I heard from Mr. McClain this morning -- Judges in this Court have consistently held that claims for injuries resulting from preparation exposure to products alleged to cause tort injuries are prepetition claims. The claim arises at the time of exposure regardless of when the injury manifests or when the claimant receives a formal diagnosis. See In re Chateaugay Corp, 2009 Westlaw 367490 at *6 (Bankr. S.D.N.Y. 2009) (Lifland J.) In re Quigley Company Inc., 383 Br. 19, 27 (Bankr. S.D.N.Y. 2008) (Bernstein J) both holding that if a plaintiff was exposed to asbestos before the petition date, he or she held a prepetition claim.

I must conclude that the claimants' hold prepetition claims because any exposure of the claimants to diacetyl that was manufactured or sold by the Debtors occurred prepetition. Each of the nine claimants alleges that he or she was exposed

to diacetyl during the course of employment at the Fermenich facility during various time periods starting from 1984 to 2000 and continuing to 2011. The Debtors ceased manufacturing and/or selling diacetyl in 2005, four years prior to filing a chapter 11 petition in this Court. The claimants' claims as to injuries arising from alleged exposure to diacetyl that was manufactured or sold by the Debtors arose at the time of exposure, which under these facts would be 2005 at the latest. Thus, these are prepetition claims.

The rule that claims are discharged under those circumstances is, however, subject to an important qualification, one that's required under the U.S. Constitution. That's a requirement of due process. Though I was surprised and disappointed to see that the Fermenich claimants failed to mention the key case in this area, which is a Supreme Court decision, notwithstanding the language of Section 1141 the discharge of claims without notice violates the due process clause of the United States Constitution. As the Supreme Court held in Mullane vs. Central Hanover Bank and Trust Company, 339 U.S. 306, 314 (1950), "an elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is noticed reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as

reasonably to convey the required information."

The Supreme Court in Mullane went on to note that actual notice is not required in all circumstances to satisfy due process. Rather "in the case of persons missing or unknown, employment of an indirect and even a probably futile means of notification is all that ... [is required]." 339 U.S. at 317. See also Dippipo (phonetic) vs. Kmart Corp., 335 Br. 290, 296 (S.D.N.Y. 2005) (Connor J) "It is well settled that when a creditor is 'unknown' to the debtor, publication notice of the claims' bar date is adequate constructive notice sufficient to satisfy due process requirements...." An "unknown" creditor is one whose interests "are either conjectural or future or although they could be discovered upon investigation, do not in due course of business come to knowledge [of the debtor]." Mullane 339 U.S. at 317.

Courts have routinely held that publication notice is sufficient to satisfy due process standards for unknown creditors. See for example, In re Chateaugay Corp., 2009 WL 367490, at *5. That's not, however, to say that any means of publication notice is sufficient. The publication notice must be reasonably calculated to reach interested creditors. See Waterman Steamship Corp. vs. Aguilar, (In re Waterman Steamship corporation), 157 Br. 2290 (S.D.N.Y. 1993). That's why Bankruptcy Judges like me look at the proposed form of notice and we make a judgment as to whether we think that under all

the circumstances it will skin the cat that is whether it's reasonably calculated to achieve the notice that the Constitution and traditional concepts of fairness require. That's why, for example, we had the supplemental noticing scheme here, partly because the Debtors anticipated the need and partly because I wanted to be comfortable that it would do a better job of providing that kind of notice, the notice the way it's very often proposed in large chapter 11 cases.

Here I find that the claimants fall squarely within the definition of unknown creditors because although their interests likely were not conjectural or future at the time of notice, their interests were not discoverable by the debtors in the ordinary course of the Debtors' business. As unknown creditors, actual notice was not required to satisfy due process. Rather, the Debtors only needed to provide publication notice reasonably calculated to reach the claimants as dictated by Waterman and Mullane.

I find that the Debtors' extensive bar date noticing process including specific diacetyl related notices and local publications and postings at various sites, including the Fermenich facility, were sufficient to satisfy due process. As the reorganized Debtors point out in their motion, following that unusually thorough noticing procedure, five individuals employed at the Fermenich facility filed proofs of claim asserting injuries allegedly caused by exposure to diacetyl at

that facility. This lends further support to the finding that notice of the bar date for individuals who worked at the Fermenich facility was sufficient to satisfy the due process standards articulated under Mullane and Waterman.

The claimants make three main objections which I'll deal with now although one of them was largely addressed already. They argued that they could not have been provided with notice reasonably calculated to advise them of their future ability to assert a claim because it wasn't until after the bar date that they received the diagnosis from a doctor telling them that they had injuries caused by diacetyl. The reorganized Debtors respond persuasively that many hundreds of personal injury claimants, including diacetyl claimants, filed proofs of claim based on asserted physical injury without the formality of a doctor's diagnosis, and that these claimants should be held to the same standard. In fact, other individuals who worked at the Fermenich facility and who were represented by Humphrey Farrington did exactly that.

Next, the Fermenich claimants argue that they were denied due process because they didn't receive sufficient notice. They argue that none of the Fermenich claimants ever subscribed to, received or read the Home News Tribune, a newspaper in which supplemental notice was published, nor were they otherwise aware of the bar date or plan of reorganization. But again that runs contrary to what Mullane, which they failed

to address, requires. The standard doesn't turn on whether they actually read the notice, rather the question is whether the notice scheme was reasonably calculated to reach unknown creditors which as I noted previously I find to be the case here.

Further, the Fermenich claimants argue that they can't constitutionally be bound by the discharge injunction because they were denied due processes, there was no future claims representative appointed to represent their interest. A future claims representative was not required here. They correctly rely upon Manful (phonetic) 603 F.3d, 135 (2010) in which the Second Circuit held that Chubb (phonetic) wasn't adequately represented by the asbestos claimants in the proceedings that led the court to approve a nondebtor release of other liability insurers including Travelers, and thus that Chubbs' claims against Travelers for contribution and indemnity were not enjoined. But as the reorganized Debtors point out here Manful isn't on point -- it's a third party release case, not a discharge case, and it involves the Bankruptcy Court's exercise of in persona authority in relation to third party claims against a nondebtor rather than in rem authority dealing with the claims that are asserted against the debtor itself and the debtor's property itself. The motion here invokes this court's in rem jurisdiction.

The applicable authority here as the reorganized

Debtors correctly assert is the bundle of cases such as Chateaugay in which a debtor's discharge against unknown tort claimants was enforced based upon publication notice of the debtor's bar date.

Finally, the parties argue an issue that ultimately is not relevant, whether they were parties to the earlier Humphrey Farrington settlement or not. By reason of what I've held previously I don't need to deal with that issue. To be sure, I must conclude that when they sign their retainer agreements, which is the only evidence I have in the record, and where these agreements are heavily redacted, is not necessarily determinative without knowledge of the extent to which any of the nine folks who are the subject of the motion were represented by Humphrey Farrington or could be found to have done so before they signed those particular pieces of papers. But in light of the other conclusions that follow, I don't need to address what is effectively another string to the reorganized Debtors.

I'm well aware of the fact as argued by Mr. McClain today that when somebody has suffered an injury but doesn't yet know it, there are fairness issues associated with requiring an individual of that circumstance to file a claim even though as the record reflects here, many claimants did exactly that. But nevertheless, as cases like Chateaugay, Quigley, Holmes versus ALPA 745, F.Supp 2d, 176, 196(E.D.N.Y. 2000), Placid Oil,

claims of this character arise at times earlier than the plaintiff may be in a position to sue. I don't write on a clean slate and indeed it could be persuasively argued if Judges could act upon their notions of policy rather than on precedent and case law. It would be difficult for the bankruptcy system to effectively function if the law were any different. But as I've stated many times in writing the interest of predictability that is so important to the commercial community require me to follow the decisions of my colleague Bankruptcy Judges in this district, except at least in cases of manifest error and certainly the decisions by Chief Judges Lifland and Bernstein are hardly of that character. Consistent with their rulings, there were claims here that were capable of being subject to publication notice, it was good, indeed better than average publication notice, the Humphrey Farrington firm had further opportunities to make even greater suggestions and I effectively incorporated anything that I felt was practical to achieve the best notice we could, and the notice did its job.

Accordingly, the Fermenich claimants' claims were discharged and they can't proceed with their pending lawsuit.

Ms. Labovitz, you are to settle an order in accordance with the preceding ruling.

MS. LABOVITZ: Yes, Your Honor.

THE COURT: All right. We're going to take a five

minute recess, maybe ten, enough for me to get my voice back and then we'll continue with the next matter on the calendar. We're in recess.

MS. LABOVITZ: Thank you, Your Honor.

(Proceedings concluded at 11:14 AM)

I N D E X

RULINGS

CERTIFICATION

I, Theresa Pullan, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

AAERT Certified Electronic Transcriber CET**00650

Theresa Pullan

February 3, 2013

Veritext

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